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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Robert Miller,

Plaintiff,

v.

4Internet, LLC; and John Does 1-10,

Defendants.

Case No. 2:18-cv-02097-JAD-VCF

**United States' Acknowledgement of
Constitutional Challenge**

On July 23, 2020, Defendant 4Internet, LLC filed a notice of constitutional challenge with respect to 17 U.S.C. §§ 102 and 410. ECF No. 49. Although the United States may intervene in any action wherein the constitutionality of an act of Congress is questioned, 28 U.S.C. § 2403, here the constitutional challenge has only been raised in Defendant's Amended Answer. *See* ECF No. 29. The United States is unaware of any motion or other filing that details the basis of Defendant's constitutional challenges or seeks a court ruling striking down the provisions identified above. Moreover, given that the case is in its early stages, there is some possibility that this case may be resolved without the Court having to decide any of the constitutional challenges asserted by Defendant. Therefore, the United States believes that intervention would be premature at this time. *See Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981) ("[P]rior to reaching any constitutional question, federal courts must consider nonconstitutional grounds for decision.").

1 The Solicitor General decides whether to approve intervention by the United States,
2 28 C.F.R. § 0.21. Obtaining the Solicitor General's approval generally takes several weeks.
3 Therefore, if Defendant seeks a ruling from the Court on the constitutionality of 17 U.S.C.
4 §§ 102 and/or 410 in a dispositive motion or other filing, the United States respectfully
5 requests that, as Federal Rule of Civil Procedure 5.1 and 28 U.S.C. § 2403 require, the
6 Court notify the United States of that challenge and permit the United States to intervene
7 within sixty days of that notice.

8 Respectfully submitted this 24th day of September 2020.

9 NICHOLAS A. TRUTANICH
10 United States Attorney

11 /s/ Skyler H. Pearson
12 SKYLER H. PEARSON
13 Assistant United States Attorney
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